

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT AND
CONDITIONAL USE PERMIT ISSUED
BY GRAYS HARBOR COUNTY TO
GRAYS HARBOR COUNTY PUBLIC
WORKS DEPARTMENT,

HENRY BRUEHER,

Appellant,

v.

GRAYS HARBOR COUNTY and
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 85-7

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of the issuance of a shoreline substantial development and conditional use permit for the realignment of a roadway alongside the Wishkah River, came on for hearing before the Shorelines Hearings Board on April 30, 1985, at Aberdeen, Washington. Seated for and as the Board were: Lawrence J. Faulk, Rodney M. Kerslake, Nancy R. Burnett, Cynthia Sullivan, and Gayle

1 Rothrock, presiding. The proceedings were officially reported by
2 Connie E. Church of Grays Harbor-Pacific Reporting Service.

3 Appellant Henry Brueher appeared and represented himself.
4 Respondent Grays Harbor County and its Public Works Department
5 appeared and was represented by Deputy Prosecuting Attorney Jennifer
6 L. Wieland. Co-respondent State Department of Ecology appeared only
7 through an employee witness, Sam Bailey.

8 Witnesses were sworn and testified. Exhibits were examined. From
9 the testimony heard and the exhibits examined, the Shorelines Hearings
10 Board makes these

11 FINDINGS OF FACT

12 I

13 This matter arises on the southerly shoreline of the Wishkah River
14 within Grays Harbor County.

15 II

16 The Grays Harbor County Department of Public Works contemplates
17 the realignment and reconstruction of a one-half mile section of
18 county road situated along the southerly bank of the Wishkah River.
19 This section of road carries approximately 2,400 vehicles per day and
20 is presently substandard in terms of alignment and has certain
21 structural deficiencies which make the roadway only marginally stable
22 and creates constant maintenance problems including inundation from
23 river flooding approximately ten days per year, and causes a high
24 incidence of traffic accidents.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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III

The road improvement contemplated by Grays Harbor County involves some excavation of the steep bank on the uphill side of the road and filling in the Wishkah River in order to create a more stable roadbed. The subject road project constitutes phases II and III of an overall project with phase I lying to the north and having recently been completed. The estimated project cost is \$1 million and is to be financed, in part, by the Federal Highway Administration.

IV

Appellant Brueher's property is situated on the top of the bluff above the proposed project. Mr. Brueher contends that the bluff excavation for the roadway reconstruction will cause additional instability to his property and may cause portions of his one and one-half acres of property to slide. A sizeable amount of "overburden" is located on the Brueher and neighboring properties which was apparently placed there during the time the subdivision, within which the Brueher property is located, was developed. A part of the Brueher property is encumbered by an easement for the Bonneville Power Administration (BPA) which has constructed a tower and electrical transmission lines within said easement. The construction of the tower involved a certain amount of filling and grading.

A bank slide on the Brueher property and on the BPA right-of-way occurred after some spring rains on April 27, 1985. A part of the slide reached the edge of the Wishkah Road right-of-way. Fissures in

1 the overburden are visible at several locations on the Brueher
2 property.

3 Mr. Brueher asserts that it would be preferable for the County to
4 relocate Wishkah Road further away from the hillside and to construct
5 the roadway on a structure located out over the Wishkah River, or in
6 the alternative, to construct a "soldier pile" or similar bank
7 stabilization structure along the bank adjacent to his property.

8 V

9 On July 23, 1984, the Grays Harbor Department of Public Works
10 filed for a shoreline substantial development and conditional use
11 permit. Public hearings were held by the Grays Harbor County
12 Shorelines Hearings Board on December 11, 1984, and January 8, 1985.
13 Approval for the project was given by the local shoreline board on
14 January 8, 1985, and thereafter the permit was submitted to the
15 Department of Ecology (DOE) for its consideration pursuant to WAC
16 173-14-140. By letter dated January 29, 1985, DOE indicated its
17 concurrence with Grays Harbor County's approval of the project. From
18 this permit approval, appellant Brueher appealed to this Board on
19 February 27, 1985.

20 VI

21 The project is situated within an area designated by the Grays
22 Harbor County Shoreline Master Program (GHCSMP) as a Rural
23 environment, which permits highways and fills as conditional uses.
24 Chapter 21.3 GHCSMP. In addition, the GHCSMP sets forth certain
25 development policies concerning the construction and location of roads

1 and railroads; which are set forth below:

2 (b) all construction should be designed to protect
3 the adjacent shorelands against erosion, excessive
4 excavations and fills, and other factors detrimental
5 to the environment.

6 and,

7 (d) the elevation of roads should allow safe access
8 for ordinary and emergency vehicles in time of
9 flood. Drainage openings should be sufficient to
10 discharge flood flows without unduly increasing flood
11 heights.

12 and, further

13 (g) road locations should fit the topography as much
14 as possible, and natural conditions should be altered
15 as little as possible consistent with functional
16 requirements. (Chapter 2.6 GHCSMP.)

17 VII

18 An environmental assessment for the overall Wishkah River
19 improvement (Phases I, II, and III) was prepared by the Federal
20 Highway Administration, the Washington Department of Transportation,
21 and Grays Harbor County in 1982. The environmental assessment found
22 the project would have no significant environmental impacts. An
23 environmental checklist and a declaration of non-significance was
24 filed by the County Department of Public Works on July 25, 1982.

25 In addition to applying for a shoreline substantial development
26 and conditional use permit, Grays Harbor County applied for and
27 received a hydraulics permit (HPA) for the project. An application
for the requisite Army Corps of Engineers permits is pending.

28 VIII

29 Subsequent to the issuance of the shoreline substantial
30 development and conditional use permit by Grays Harbor County and DOE,

1 the County retained the services of Shannon & Wilson of Seattle to
2 review the project design in terms of geologic conditions, soil
3 quality and stability of slopes. Tests were conducted in the area and
4 studies done which resulted in a report entitled "Geotechnical
5 Studies--Wishkah Road Improvements--Grays Harbor County, Washington"
6 (April 1985).

7 The report recommended, among other things, adding trench-type
8 rock and piping drainage features at the road shoulders and
9 subsurface, moving the project slightly closer to the hill, placing a
10 retaining wall along the Sticevich property line, placing a road
11 supporting fill at a new angle of 2.5' to 1' instead of the originally
12 planned 1.5' to 1' slope to increase the stability of the roadbed,
13 altering the places and angles of slope excavation, hydroseeding the
14 regraded slopes, and installing soldier pile walls along the top of
15 several roadway cut areas, one being in the vicinity of the BPA tower
16 and the Brueher and Fuhrer properties (Section V, Conclusions and
17 Recommendations, pp. 12-19).

18 The report concluded that the proposed roadway reconstruction,
19 provided it was done in accordance with the report recommendations,
20 would not affect the stability of the properties on top of the bluff
21 uphill from the roadway including the Brueher property. Shannon &
22 Wilson, however, warned that the overburden on the Brueher, Fuhrer and
23 other properties was probably unstable and could slide with or without
24 the improvements to Wishkah Road, and slope stabilization measures
25 should be undertaken by the uphill property owners, including BPA.

IX

Also, subsequent to issuance of the shoreline substantial development and conditional use permit by Grays Harbor County and DOE, County Public Works officials elected to fill out another Environmental Checklist on March 20, 1985, presumably to further document environmental concerns.

X

At hearing before this Board, respondent Grays Harbor County submitted plans (Exhibits R6 and R7) which incorporated all changes in the project recommended in the Shannon & Wilson report with the exception of the 2.5' to 1' roadbed fill slope. The County indicated its intentions to adhere to all the recommendations of the Shannon & Wilson report, including the 2.5' to 1' slope on the river side of the roadbed fill.

In testimony at hearing a DOE official, Sam Bailey, indicated he thought any modifications which needed to be accomplished to more safely implement the realignment and reconstruction would not be substantial modifications. County officials came to the same conclusion.

XI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From the Findings of Fact the Board comes to these

1 CONCLUSIONS OF LAW

2 I

3 We review the proposed development for consistency with the
4 applicable (Grays Harbor County) Shoreline Master Program and the
5 Shoreline Management Act (SMA). RCW 90.58.140(2)(b). We also review
6 for compliance with the provisions of WAC 173-14-140 Review criteria
7 for Conditional Use Permits and with the State Environmental Policy
8 Act (SEPA), RCW 43.21C. King County Chapter WEC v. Seattle, SHB No.
9 11 (1973) and Coughlin v. Seattle, SHB No. 77-18 (1977).

10 II

11 Appellant, having requested review, bears the burden of proof in
12 this proceeding. RCW 90.58.140(7).

13 III

14 The subject shoreline permit was issued after consideration of
15 environmental factors. See Sisley v. San Juan County, 89 Wn. 2d 78,
16 569 P.2d 712 (1977). Appellant has not shown that the DNS was
17 materially incorrect. Issuance of the DNS in this matter constituted
18 procedural compliance with SEPA.

19 IV

20 Appellant has failed to show that the project as proposed before
21 this Board by the Grays Harbor County Department of Public Works,
22 including the recommendations of Shannon & Wilson consultants, is
23 inconsistent with the GHCSMP, the SMA, or the criteria for authorizing
24 conditional uses set forth in WAC 173-14-140. Evidence submitted at
25 hearing demonstrated that the unstable soils conditions existing on

1 the top of the bluff adjacent to Wishkah Road are unrelated to the
2 road and would be unaffected by its realignment and reconstruction.

3 V

4 Since the change in the bank slope of the roadbed on the riverside
5 from its 1.5' to 1' configuration depicted in the permit plans to 2.5'
6 to 1' recommended by Shannon & Wilson consultants was not shown on the
7 construction plans , submitted to the Board for its consideration by
8 respondent Grays Harbor County, the Board can make no determination
9 regarding the consistency or inconsistency of such design change with
10 the GHCSMP, the SMA, the criteria set forth in WAC 173-14-140, or SEPA.

11 VI

12 Appellant has not proven that the proposed realignment and
13 reconstruction of Wishkah Road would have any significant adverse
14 effect upon the quality of the environment nor that the proposed
15 development is inconsistent with the GHCSMP, SMA, WAC 173-14-140, or
16 SEPA. The shoreline permit should be affirmed with the imposition, as
17 conditions in the shoreline substantial development and conditional
18 use permit, of the recommendations of Shannon & Wilson as set forth in
19 Section V (pp. 12-19) of their report, with the exception of the
20 change in the roadbed fill slope in regard to which this Board makes
21 no determination.

22 VII

23 Any Finding of Fact which is deemed a Conclusion of Law is hereby
24 adopted as such.

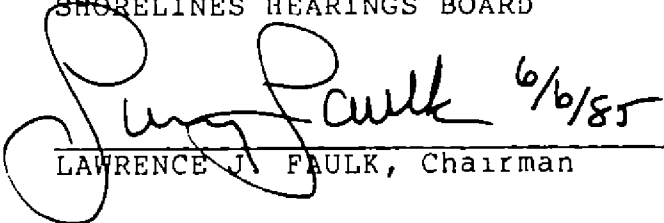
25 From these Conclusions of Law the Board enters this
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 85-7

ORDER

The shoreline substantial development and conditional use permit granted by Grays Harbor County and DOE to the Grays Harbor County Department of Public Works is hereby affirmed with the inclusion, as conditions to the permit, of the recommendations of Shannon & Wilson as set forth in Section V (pp. 12-19) of their report with the exception of the recommended 2.5' to 1' slope on the riverside of the roadbed fill.


DONE this 6th day of June, 1985, at Lacey, Washington.

SHORELINES HEARINGS BOARD

 6/6/85
LAWRENCE J. FAULK, Chairman

(See Partial Dissent/Concurrence
GAYLE ROTHROCK, Vice Chairman


RODNEY M. KERSLAKE, Member


NANCY R. BURNETT, Member

(See Partial Dissent/Concurrence
CYNTHIA SULLIVAN, Member

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PARTIAL CONCURRENCE
AND PARTIAL DISSENT

This matter, the request for review of the issuance of a shoreline substantial development and conditional use permit for the realignment of a roadway alongside the Wishkah River, came on for hearing before the Shorelines Hearings Board on April 30, 1985, at Aberdeen, Washington. Seated for and as the Board were: Lawrence J. Faulk, Nancy R. Burnett, Rodney M. Kerslake, Cynthia Sullivan, and Gayle

1 Rothrock (presiding). The proceedings were officially reported by
2 Connie E. Church of Grays Harbor-Pacific Reporting Service.

3 Appellant Henry Brueher appeared and represented himself.
4 Respondent Grays Harbor County and its Public Works Department
5 appeared and was represented by Deputy Prosecuting Attorney Jennifer
6 L. Wieland. Co-respondent State Department of Ecology appeared only
7 through an employee witness, Sam Bailey.

8 Witnesses were sworn and testified. Exhibits were admitted and
9 examined. Argument was heard. From the testimony, evidence, and
10 contentions of the parties, the Board makes these

11 FINDINGS OF FACT

12 I

13 The Grays Harbor County Department of Public Works filed an
14 application for a shoreline substantial development and conditional
15 use permit in a Rural environment designation with the Grays Harbor
16 County Shorelines Hearings Board on July 23, 1984. This application
17 was for the realignment and reconstruction of approximately .95 mile
18 of substandard road lying along the Wishkah River in Section 33,
19 Township 18 N, Range 9 W, W.M. The road is only marginally stable.
20 The project involves some excavation of the adjoining slope and
21 filling in the Wishkah River in order to stabilize the road.

22 II

23 Approximately 2,400 vehicles travel the Wishkah Road daily. The
24 current roadway has structural deficiencies which create a constant
25 maintenance problem. Among other inconveniences, drainage or

26 PARTIAL CONCURRENCE/
27 PARTIAL DISSENT
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1 inundation from river flooding impacts part of the roadway for up to
2 ten days each year. The reconstruction proposed will upgrade the
3 roadway and make it safer for the traveling public. Other sections of
4 this river-fronting road have been upgraded in recent years and the
5 County is anxious to finish reconstruction of the road with
6 substantial financial assistance from the Federal Highway
7 Administration. The project cost is approximately \$1,000,000. They
8 have been planning and completing Wishkah Road repairs since 1979.

9 III

10 Appellant Brueher's property lies on the bluff above the proposed
11 project. Mr. Brueher contends that this permit should not be granted,
12 fearing that bluff excavation will cause additional instability to his
13 property. With a sizeable amount of soil overburden on his property,
14 and some previous excavation and slope construction done by Bonneville
15 Power Administration (BPA) to erect a tower, Brueher asserts further
16 cutting of the bluff may cause his property to slide again, resulting
17 in a loss of part of his one and one-half acres of property.

18 A bank slide on Brueher's property and on the BPA right-of-way
19 occurred after some spring rains, on April 27, 1985. Bank soils,
20 rocks, and sod adjacent to the BPA tower line and tower slid down an
21 embankment. Part of the slide arrived at the edge of the Wishkah Road
22 right-of-way.¹ There are large fissures in the overburden adjacent
23 to the tower.

24
25 1. No bank stabilization devices were ever placed on the Brueher
26 property or by BPA on its easement and right-of-way following the
27 regrading of the property and construction of the electric tower.

IV

An Environmental Assessment for the multi-phase Wishkah Road upgrading was prepared by the Federal Highway Administration, the Washington Department of Transportation, and Grays Harbor County in 1982. The Environmental Assessment found that this project would have no significant impacts. Surface water run-off and its incumbent pollution was not directly addressed or found to have significant impact by the County.

An Environmental Checklist and a Declaration of Non-Significance was filed by the County Department of Public Works on July 25, 1982.

V

In addition to applying for a substantial development permit, Grays Harbor County applied for and received a hydraulics permit (HPA) for this project from the Department of Fisheries for the design selected earlier. A 404 permit application is currently pending before the Army Corps of Engineers, apparently also for the 1982 design.

VI

Public hearings were held before the Grays Harbor County Shorelines Hearings Board on December 11, 1984, and January 8, 1985. At both meetings public testimony was taken including that of appellant. Approval for this project was given by the local Shorelines Board on January 8, 1985, apparently for the 1982 design.

As a result of the public hearings, questions remained which the County needed to have answered. County Public Works officials elected

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1 to fill out a second Environmental Checklist on March 20, 1985,
2 perhaps to more accurately document environmental problems and
3 concerns. The Department of Public Works also hired the geotechnical
4 consulting firm of Shannon & Wilson in Seattle to test the soil
5 quality, stability of the slope, geologic conditions, right-of-way
6 stability, and feasibility of this project. Tests were conducted in
7 the area and on adjacent properties. A "Geotechnical Studies--Wishkah
8 Road Improvements--Grays Harbor County, Washington" Report was
9 thereafter issued (April 1985).

10 The report recommended adding trench-type rock and piping drainage
11 features at the road shoulders and subsurface, moving the project
12 closer to the hill, placing a new guardrail along the riverside of the
13 road, placing a retaining wall along the Stricevich property line,
14 placing a road-supporting fill at a new angle (slope 2.5 to 1) out in
15 the river to sustain the marginally stable roadbed, altering the
16 places and angles of slope excavation and hydroseeding the regraded
17 slopes, and installing soldier pile wall to retain fill and residual
18 soil between the top of the slope cut area and the BPA tower on part
19 of the Brueher and Fuhrer properties. Other recommendations were also
20 made.

21 The report warned the overburden to the Brueher, Fuhrer and other
22 properties was probably unstable and could slide soon with or without
23 the road upgrading project. Actions on the BPA easement and on
24 adjacent properties which built up backyards and affected the power
25 transmission line path created the significant amount of overburden
26 which now requires comprehensive slide protection.

VIII

Prior to the Shannon and Wilson evaluation and report the Department of Ecology (DOE) received and reviewed the subject conditional use permit. Their reviewers did not make a site visit, limiting their evaluation to compliance with the County's shoreline master program and the criteria set forth in WAC 173-14-140. Appellant Brueher wrote DOE about concerns he has, but the letter apparently did not effectively alert DOE in a fashion which influenced their review, since it arrived at the Department on February 11, 1985, after the DOE review was completed.

On January 29, 1985, the DOE sent a letter to Grays Harbor County Planning and Public Works Departments concurring in the County's approval of the project as submitted. In testimony at hearing a DOE official, Sam Bailey, indicated he thought any modifications which needed to be accomplished to more safely implement the realignment and reconstruction would not be substantial modifications. Apparently County officials came to the same conclusion, as they did not submit formal revised plans for review and comment.

IX

On February 27, 1985, the Board received a request for review of the DOE and County decisions to issue a shoreline substantial development and conditional use permit for the subject upgrading and realignment of a portion of Wishkah Road, about which appellant felt aggrieved.

PARTIAL CONCURRENCE/
PARTIAL DISSENT
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1 X

2 Any Conclusion of Law which is deemed a Finding of Fact is hereby
3 adopted as such.

4 From these Findings of Fact the Board comes to these

5 CONCLUSIONS OF LAW

6 I

7 The Board has jurisdiction over these persons and these matters
8 under terms of the Shoreline Management Act (SMA), Chapter 90.58 RCW
9 and the State Environmental Policy Act (SEPA) Chapter 43.21C RCW.

10 II

11 The project is in a Rural shorelines designation under the
12 applicable master program where highways are a conditional use, as is
13 the placement of fill in the shorelines and river. The existing
14 highway predates the SMA. There are adjacent shoreline residential
15 and agricultural land uses.² We conclude this project is allowable
16 under the above-mentioned designations and under guidelines and
17 restrictions set forth in the Grays Harbor County Shoreline Master
18 Program (GHSCMP) at chapters 4 and 21.

19 III

20 Chapter 2, "Development Policies - Roads and Railroads" of the
21 GHSCMP admonishes

22 (b) all construction should be designed to protect
23 the adjacent shorelands against erosion, excessive
24 excavations and fills, and other factors detrimental
to the environment.

25 and,

26 _____
27 2. Within 200 feet of the river's edge at ordinary high water.

1 (d) the elevation of roads should allow safe access
2 for ordinary and emergency vehicles in time of
3 flood. Drainage openings should be sufficient to
discharge flood flows without unduly increasing flood
heights.

4 and, further

5 (g) road locations should fit the topography as much
6 as possible, and natural conditions should be altered
as little as possible consistent with functional
7 requirements.

8 The original 1982 plans underpinning the permit do not adequately
9 protect against erosion and excessive alterations of the landscape at
10 some points along the road. They do not show the riverbank rip-rap
11 intended for roadbed support at a 2.5 to 1 slope. Drainage and
12 run-off is not adequately provided for, nor is there adequate
13 provision for sustaining or restoring natural conditions of the
14 shorelands on the bank side of the road.

15 Revisions, which at least include all recommendations in the
16 Shannon and Wilson geotechnical studies report of April 1985, should
17 be made a part of any permit issued for this project by the County and
18 DOE.

19 IV

20 Grays Harbor County engaged in a two-stage project design and
21 environmental review procedure here, apparently due to uneven timing
22 of federal funds availability. This procedure, we conclude,
23 culminated in contemplating significant revisions to 1982 final
24 designs for this project, but no permit approvals indicate this. Some
25 red pencil drawings on a three-part Plan and Profile presented by the
26 County at hearing suggests some of the intended project changes. The

1 Plan and Profile is stamped "Preliminary only."

2 Environmental impacts reflected in the Environmental Checklist,
3 the Environmental Assessment, and in the record at public hearings
4 before the County's Shorelines Board and this Board point to the
5 necessity to incorporate all geotechnical studies suggested revisions
6 into the final drawings of any permit reviewed and issued for this
7 project. Otherwise, minimizing damage to the shorelines and ecology
8 of the area is not effected. RCW 90.58.020 and 43.21C and GHCSMP
9 Goals and Policies. This matter should be remanded to the County.

10 V

11 Any Finding of Fact which is deemed a Conclusion of Law is hereby
12 adopted as such.

13 From these Conclusions the Board enters this
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26 PARTIAL CONCURRENCE/
27 PARTIAL DISSENT
SHB No. 85-7

ORDER

Grays Harbor County shoreline substantial development and conditional use permit No. 84-34 is remanded to the County and DOE for review and reprocessing in accordance with the Findings and Conclusions of this decision and Order.

DONE this 6th day of June, 1985.

SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman


CYNTHIA SULLIVAN, Member

PARTIAL CONCURRENCE/
PARTIAL DISSENT
SHB No. 85-7